Essay: The Golan Heights and international law

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The Golan Heights: Strategically vital because it overlooks all of northern Israel

Contradictory principles and blatant hypocrisy

The perennial issue of Israel's borders flared up once again in late March when US President Donald Trump announced that the US will recognise Israeli sovereignty over the Golan Heights, the volcanic plateau that Israel conquered from Syria in 1967. To say that this decision goes against an almost universal consensus in the foreign policy establishment of nearly every major diplomatic actor in the world today would be true. To say, as many do, that this violates some long-held, sacred norm of international relations in the postwar world, however, would be false.

In fact, beyond the alarmism and facile bromides inflamed by Trump's announcement, what the Golan situation actually illustrates is that the whole gamut of international "norms", when they are applied injudiciously and for political ends as so often happens with Israel, can be reduced to blunt cudgels. The norms used to adjudicate land claims and challenge Israel's rights to the Golan are not only selectively applied, they are mutually incoherent – their real power is not as legal precedents but as political instruments.

Recognised international boundaries come into being in one of three ways: Two bordering countries can agree on them by treaty, a newly independent country can inherit the boundaries drawn by a previous colonial power, or internal boundaries may be held over after a country splits up to form new international borders.

Respecting these boundaries is a bedrock of international norms, though hardly an absolute. In extreme cases, such as genocide, ethnic cleansing, and enslavement, even a recognised international border cannot provide legal immunity from foreign attack. That, at least, was the justification for the Kosovo War which began 20 years ago.

Israel presents a special case when it comes to borders, as the new country did not unequivocally inherit the borders of the land's previous British and Ottoman rulers, nor was there a chance for bilateral treaties to establish new ones since all of its neighbours rejected its very existence for the first four decades after independence.

The political scientist Stacie Goddard wrote recently in the *Washington Post* that "Trump's position on the Golan Heights is inconsistent with what scholars call the territorial integrity norm." This is the norm that "stipulates that states may not use force to alter interstate boundaries."

For example, if the United States sent its army across the 49th parallel and occupied British Columbia and Yukon territory in Canada in order to create territorial contiguity with Alaska, this would be an obvious violation of the territorial integrity norm. The same would be true for a French incursion into Germany's Saarland and for a much less hypothetical Russian invasion of Crimea.

It would indeed be reckless if the US had embarked on a policy change that genuinely weakened this norm as critics of the move claim. But in reality, the norm is clearly not applicable to the Golan, and attempts to restate it in a way to make it applicable only end up delegitimising its application anywhere else.

The accusation that Israel and the US are flagrantly violating diplomatic and legal norms rests on two such restatements of the norm, both of them flawed. The first one takes the armistice lines created in 1949 between Israel and its Arab neighbours as de facto international borders and tries to apply to them the same standards of territorial integrity as an internationally recognised boundary.

The problem is that the armistice agreements explicitly say the opposite – and at the insistence of the Arab side. Article V of the Israeli-Syrian General Armistice Agreement (20 July 1949) begins: "It is emphasised that the following arrangements for the Armistice Demarcation Line between the Israeli and Syrian armed forces and for the Demilitarized Zone are not to be interpreted as having any relation whatsoever to ultimate territorial arrangements affecting the two Parties to this Agreement." Similar passages exist in the armistice with Jordan and with Egypt, but not in the armistice with Lebanon, which explicitly recognises the previous Franco-British boundary as an international border. Syria, like Egypt and Jordan, assumed that in a future war they might conquer more territory and didn't want to be saddled with a binding line.

The problems don't end there. Even if the agreements that established the 1949 armistice lines didn't explicitly declare them to be temporary and nonbinding, they would have ceased to have any legal validity when fighting erupted again, as it did in June 1967. As in the 1948 war, the Arab aim in 1967 was explicitly and openly stated: It ranged from ethnic cleansing to genocide of the Jewish people of Israel. The expectation that the colossal Arab defeat could be followed by a return to the lines from the previous war would be like the Germans in 1945 expecting they could restore the borders they had in 1919.

A further problem is that the armistice lines themselves rewarded aggressive conquest, putting Jordan, Egypt, and (importantly for this discussion) Syria in lands that were beyond their own pre-war boundaries. Israel's territorial gains are a violation of a post-1945 principle, but Arab territorial gains (which also took place after 1945) are somehow not? And if the armistice lines are sacrosanct, where does this leave the claims of the Palestinians? After all, the armistice leaves Gaza for Egypt and the West Bank for Jordan and nothing for the Palestinians.

Finally, it's hard to see how armistice lines can attain a status of permanence. They were, after all, the lines at which a previous war stopped. But two more wars were fought on the Israeli-Syrian frontier, and those ended up with clear lines, too. What is the general norm that explains why one set of lines is "holy" and the next set an affront?

If the armistice lines cannot establish a lawful boundary between Syria and Israel, what else is there? One possible solution is the doctrine known as *uti posseditis juris*, which stipulates that newly independent states inherit the borders of their previous colonial occupants. This has a much more solid legal ground and is a much more widely applied practice, and this informs the second problematic restatement of the territorial integrity norm.

But it too throws up so many challenges that no one dares make this case, at least not with even a minimal dose of consistency. In the case of the Israeli-Syrian border, it's not even clear which colonial line would be valid: The French and British negotiated one line in 1920 and another in 1922 and continued to make minor adjustments after that. The ambiguity of these lines was the basis of the rather flimsy Syrian argument before 1967 for access to the Sea of Galilee.

More importantly, the almost universal consensus that Israel's presence in the West Bank is one of the great international crimes of our era would be threatened by the adoption of this norm. If independent Israel inherited the mandate's borders on the Golan, then it surely inherited them along the Jordan River, too.

The problems become clearer once the focus moves down the map a bit from the Golan to Jerusalem. When the US decided to finally recognise Jerusalem as Israel's capital last year (it has been Israel's capital for over 70 years), there was much hue and cry about how this move violated international norms and set a dangerous precedent – notice a pattern? Rare, however, were the attempts to nail down which international legal norms exactly were being violated.

As with the Golan issue, when you finally do get someone to point to a general rule that can be universally applicable, you end up with a multiplicity of contradictory norms which no one would dare apply to any other conflict and which are self-negating when narrowly applied to the issue in question.

Pertaining to the Golan, there are only two contradictory principles: that armistice lines form legal boundaries and that inherited borders are legally binding. But in the case of Jerusalem, there are three.

The first argues that Jerusalem is actually supposed to be internationalised in accordance with the never implemented UN partition resolution of 1947. That resolution, which was rejected by all Arab parties, designated Jerusalem as a *corpus separatum* that would belong neither to the Jewish state nor to the Arab state which were to be created at the end of the British Mandate.

The first half of the 20th century saw various attempts at "internationalisation" of disputed cities. None of these attempts succeeded, and the two most famous, Constantinople and Danzig, both now bear new names attesting to their decidedly un-international dispositions as, respectively, the large Turkish city of Istanbul and the large Polish city of Gdansk. Jerusalem's internationalisation, unlike the latter two, was never even affirmed in a treaty, but rather was proposed in the recommendation of a non-binding partition resolution which never went into effect.

Moreover, the *corpus separatum* comes with a very specific map. Included in it are all of Jerusalem and its surrounding villages and suburbs, notably Bethlehem. But no one demands the internationalisation of Bethlehem – it is instead always referred to as occupied Palestinian territory. A similar designation is frequently used for east Jerusalem,

though more frequently this is referred to as "occupied Arab east Jerusalem" or even "historically Arab east Jerusalem," because, apparently, history only begins after 1948 when the Jewish population of Old Jerusalem was expelled following a months-long siege.

This is because no one actually takes the claims of *corpus separatum* seriously and the prospect of internationalising Jerusalem in the 21st century is about as realistic as internationalising the Cypriot capital of Nicosia. And, as the talk of "occupied East Jerusalem" would indicate, there is a second norm being mobilised here, and it centres on the so-called Green Line, the cease-fire line that separated Israeli and Jordanian forces at the end of the 1948 war.

This 1948 armistice line, just like its northern counterpart, was explicitly not an international boundary. It was, as its name suggests, a line respecting an armistice whose relevance is largely gone once the armistice itself is gone. If this was not enough to invalidate it, there is also the fact that it clearly contradicts the "internationalising" mandate established in *corpus separatum.*

And it's a curious claim to make in the context of the embassies. If the problem is Israel's presence east of the line, how does placing an embassy west of the line violate the norm? In fact, the Green Line in Jerusalem functions in diplomacy like one of those two-way mirrors in police interrogation rooms. You can see it looking east when you need to condemn Israel for, say, allowing Jews to live in the Jewish Quarter of the Old City. But look west, and it disappears since it doesn't confer on Israel any rights there either. West of the line, *corpus separatum* comes back to life. How is that?

To answer that, you need to abandon both of the first two norms and bring up a third one. Jerusalem, according to the Oslo Accords, is a final status issue. Its status will be determined by negotiations between the two sides. Until then, any move that might prejudice the outcome of that final status must be avoided.

It's certainly true that the Oslo Accords stipulate that Jerusalem is a final status issue. But there is a whole list of final status issues. Jerusalem is just one. The others include borders, settlements, statehood, and refugees.

Notice anything about that list? With the exception of the refugee issue, the international community takes very explicit positions on all of them. Far from worrying about prejudicing any discussion of future borders, most major capitals treat the pre-1967 lines as sacrosanct (except, as noted above, where they might confer upon Israel rights in west Jerusalem) and since at least 2000 it has been a universal consensus that the Palestinians should end the peace process with a fully independent state, though the Oslo Accords promise no such thing. Scrupulousness about final status, apparently, is very important everywhere except where it's not.

The opposition to recognising Israel's capital doesn't stem from anything that might be called an international norm or practice, and yet all the commentary condemning the American decision to do so wrapped itself in a piety about respect for international law. And the three "norms" normally adduced to back up this claim: *corpus separatum*, the armistice line, and final status, not only don't exist for any other conflict, they brazenly contradict each other.

There is still another norm that can be applied here, though it is so trivial that no one ever really bothers to say it out loud. Sovereign states have the right to designate any city in their territory as their seat of government, and other countries will locate their

embassies there. This norm is accepted even when capital cities have been moved on a whim (Astana, Abuja) or when the status of a capital city is ambiguous (Pretoria) or when the seat of government isn't even in a capital city at all (the Hague). The exception to this norm is, for some reason, Israel, and yet for all the talk of respecting international law on Jerusalem, no one is able to make a coherent case for this exception.

The Golan issue is much more ambiguous, if also much less inflammatory. But it is weird to see the unanimity with which "experts" on foreign policy want to see an old territorial claim of Bashar al-Assad's Syria reaffirmed, even though he was not yet two years old the last time his country actually controlled the Golan, and even though no one should be in any mood to see any Assad claim reaffirmed right now.

There is actually an international norm that is relevant here. The UN Charter itself mandates that all members must "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." This is precisely the norm that Syria violated when it joined a pan-Arab invasion of Israel the day after its independence with the openly stated purpose of eliminating it, violated repeatedly when it used its positions in the Golan to fire on Israeli farmers and communities in the valley below during the years following that war, and violated once more when it again joined an Arab coalition in 1967.

Syria lost that war and could have recouped much (and possibly all) of the territory it lost to Israel by entering into peace negotiations with Israel as called for by UN Security Council Resolution 242. For 24 years it refused to do that, and even when it finally did enter into talks with Israel in the 1990s it was never able to come to terms with the minimum requirements of an actual peace treaty. Is there a norm anywhere else in the world that holds that claims to territory lost in an aggressive war are permanently retained, even after 52 years and all the atrocities associated with this Syrian Government?

The claim that territorial changes following wars declined after 1945 outside grey areas is itself problematic, and not just because the Golan is clearly such a grey area. In Europe, a series of treaties signed in the years immediately after 1945 moved borders around dramatically. In 1947, peace treaties were concluded that took away land from Finland, Hungary, Romania, and Bulgaria while, in the same year, Italy made concessions to France on the Alps and transferred islands previously in its possession to Albania and Greece. In 1954, Italy was forced to accept the partition of Istria with Yugoslavia – precipitating an exodus of nearly a quarter of a million ethnic Italians. These changes were only finalised in a treaty in 1975, and the much more dramatic territorial changes in Germany were only finally ratified in treaties in 1990.

To be sure, there have been fewer territorial changes in Europe following interstate war since 1945, but that is because there haven't been many interstate wars.

And as a matter of fairness and international justice, if Finland needed to pay a territorial price for being on the wrong side of World War II (it had very little choice, having been attacked by the Soviet Union), it's not clear why Syria should enjoy immunity despite launching wars against Israel in 1948, 1967, and 1973 and refusing to make peace ever since.

Someday Israel and Syria may yet negotiate a peace treaty, and when they do, they may very well move the border from its current cease-fire line (unchanged since 1974) to

something further west. When this happens, competing Syrian and Israeli claims will have to be weighed.

Search the archives, and you will not find a single voice in the US State Department, Britain's Whitehall, or France's Quai d'Orsay that opposed an Israeli withdrawal from the Golan in the last 30 years. On the contrary, those who warned against such a move in Israel were routinely characterised as land-grabbers and opponents of peace with outdated notions of security. Imagine if the Syrian Civil War were conducted not on the other side of the Golan, but on the shores of the Sea of Galilee. No one could say for sure which faction – regime forces, Hezbollah, ISIS, or anyone else – would be the one to carry out the attack that would drag Israel into the war, but we can say with near certainty that the Syrian Civil War would almost certainly have expanded into an Arab-Israeli war, too.

One would think that would give the experts pause, but that would be to employ another norm which doesn't actually exist.

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